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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,371	12/12/2003	Paul T. Browning	0281-0203	1841

25267 7590 09/08/2006

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EXAMINER

TRAN, SUSAN T

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/735,371	BROWNING, PAUL T.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan T. Tran	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/12/03</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-34 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-63 of USPN 6,723,308 ('308) and claims 1-62 of USPN 6,805,136 ('136). USPN '308 claims a method for treating hair comprising the steps of: straightening the hair with a hair straightening treatment, the hair straightening treatment comprising the steps of applying to the hair a straightening/alkaline composition and rinsing the hair; allowing the hair to normalize to a pH of around 4.0 to 6.0 by waiting at least 30 minutes between the completion of the hair straightening treatment and the commencement of a clarifying treatment; and clarifying the hair with the hair clarifying treatment to remove a residue of the

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straightening treatment from the hair; wherein the hair clarifying treatment includes the step of applying a composition to the hair, the composition comprising an aqueous solution including an acid component and an amphoteric surfactant. Claims 27-29 and 34-36 recite the waiting time to allow the hair to return to baseline pH. Acid component and amphoteric surfactant are found in claims 30-33. A hair treatment system is found in claim 47. USPN '308 does not explicitly recite the component in the straightening/alkaline composition. USPN '136 claims a method for treating hair comprising applying an alkaline composition comprising hydroxide compound to the hair, heating the composition and the hair, and removing the composition from the hair (claims 1, 51, 57 and 60). Heating the hair for a duration of between 5-60 minutes. Removing the composition from the hair by rinsing the hair with water and shampoo having a pH of between 4-6 (claims 5, 10 and 12). Thus, it would have been obvious to one of ordinary skill in the art to heat the hair and the alkaline composition to speed up the reaction of the alkaline composition, because the USPN '136 teaches using heat to assist the reaction of alkaline components to obtain a better result than when the reaction takes place without heat.

### ***Specification***

The specification is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. The added material which is not supported by the original disclosure is as follows: "heating the hair for a duration of at least approximately twenty minutes to approximately forty minutes".

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2, 16 and 29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. It appears that applicant's specification does not provide support for the limitation "heating the hair for a duration of at least approximately twenty minutes to approximately forty minutes".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-14 are rejected because it is not clear how the hair can return toward the baseline pH of around 4.0 to 6.0 with rinsing and waiting at least 30 minutes before applying an acidic composition. Rinsing the treated hair with water (usually having pH of 6.5-7.5) does not appear to bring down the basic pH to 6.0, or anywhere near 4.0.

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Claims 15-34 are rejected because it is not clear what the "hair treatment system" is intended for. Is it a composition? Is it a method? For examining purpose, the claims are interpreted as a composition claims, because there is a method claims (1-15) that comprising the same steps and ingredients.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 8, 9, 15-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samain US 5,570,708, in view of de la Guardia et al. US 4,314,572 or Nguyen et al. US 2003/0033677.

Samain teaches a method for the treatment of hair comprising applying a reducing composition having pH of about 11.5 to the hair, allowing the hair to wait/rest for a period of 2-30 minutes, heating the hair, rinsing the treated hair, allowing the

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rinsed hair to rest/wait for a period of up to 60 minutes, applying an acidic composition having pH from about 1.8 to the hair, and then rinsing the hair again (column 4, lines 34-45; column 6, lines 1-57; and column 7, lines 5-6). Acidic composition comprises from 0.2-40% of carboxylic acid including citric acid (column 6, lines 58-65; and column 7, lines 1-10). Acidic composition further comprises known cosmetic additives such as amphoteric surface-active agent (column 3, lines 28-37; and column 7, lines 30-32).

Samain does not explicitly teach the claimed alkaline compound.

De la Guardia teaches a system and method for hair treatment comprising applying to the hair a hair treating system comprising a guanidine hydroxide solution having pH of around 13.0, leaving the treated hair stand for about 30 minutes with heating temperature of 35°F-140°F, rinsing the hair, applying shampoo, and final rinse (abstract; 5, lines 59-64; column 7, lines 1-33).

Nguyen teaches a heat-activated hair treating system comprising at least one reducing agent, and a hydroxide compound selected from the group of sodium hydroxide, potassium hydroxide, and the like (abstract; and paragraphs 0037-0040). The system further comprises amphoteric surfactant, and proteins (paragraph 0042). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hair treating system of Samain using the alkaline agent in view of the teaching of de la Guardia or Nguyen to obtain the claimed invention, because de la Guardia teaches the use of guanidine hydroxide in hair treating systems including permanent wave composition, because de la Guardia teaches a hair treating system comprising guanidine hydroxide is free from objectionable odors

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(column 7, lines 35-43), because Nguyen teaches the use of at least one hydroxide compound with a reducing agent to obtain many advantageous results, such as without damage to the fibers but at the same time without substantial reversion to the original curly state of the hair (paragraph 0018), because Nguyen teaches the use of reducing agent may have disadvantages without alkaline agents (paragraph 0013), and because Samain teaches a hair treating system and method suitable for a wide variety of use such as curling or straightening (column 4, lines 6-33; and column 5, lines 4-21).

Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Syed et al. US 4,602,648, in view of de la Guardia et al. US 4,314,572 and Mueller et al. US 5,002,761.

Syed teaches an improved hair straightening system comprising applying to the hair a straightening composition includes sodium hydroxide and guanidine hydroxide, and allowing, allowing the composition to stay in the hair for about 5-20 minutes, rinsing the hair with water, applying a pre-shampoo normalizer, allowing the normalizer to stay in the hair for a sufficient amount of time, rinsing the hair, applying any suitable shampoo to remove any residual straightened composition as well as excess pre-shampoo normalizer, and rinsing the hair (column 5, lines 54 through column 6, lines 1-41). Pre-shampoo normalizer comprises protein, cationic species, and the claimed surfactant (column 4, lines 1-29; and column 5, lines 26-42).

Syed does not explicitly teach the heating step, and the claimed acidic composition.



De la Guardia teaches a system and method for hair treatment comprising applying to the hair a hair treating system comprising a guanidine hydroxide solution having pH of around 13.0, leaving the treated hair stand for about 30 minutes with heating temperature of 35°F-140°F, rinsing the hair, applying shampoo, and final rinse (abstract; 5, lines 59-64; column 7, lines 1-33).

Mueller teaches a hair treatment composition having a pH value of from 2-6, the composition comprising 0.1-20% malic acid, and surfactant (column 2, lines 35 through column 3, lines 1-2; and column 4, lines 20-24). Thus, it would have been obvious to one of ordinary skill in the art to modify the method for hair straightening of Syed using the alkaline composition with the heat treatment, and the shampoo composition in view of the teaching of de la Guardia and Mueller, because de la Guardia teaches a hair treating system comprising guanidine hydroxide is free from objectionable odors (column 7, lines 35-43), because Mueller teaches a shampoo composition useful to improved damage hair due to treatments such as bleaching, dyeing, or shaping (column 1, lines 5-25), because Mueller teaches a shampoo composition that showed satisfactory wet and dry combability and slightly reduced electrostatic charging (column 4, lines 50-55), and because Syed teaches the use of any suitable shampoo.

It is noted that the references do not expressly teach waiting at least 4 hours, 24 hours, or 48 hours between rinsing the hair and applying acidic composition. However, it would have been obvious to one of ordinary skill in the art to continue using the acidic shampoo taught by Mueller as often as needed including at least 4, 24 or 48 hours after the hair treatment procedure, to improve the condition of the hair, because Mueller

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teaches a shampoo composition useful to improved damage hair due to treatments such as bleaching, dyeing, or shaping (column 1, lines 5-25), because Mueller teaches a shampoo composition that showed satisfactory wet and dry combability and slightly reduced electrostatic charging (column 4, lines 50-55).

### ***Pertinent Arts***

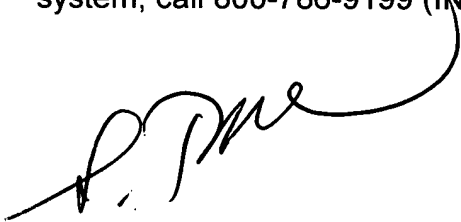
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leszek et al. is cited as of interest for the teaching of neutralizing composition and method for shaping hair.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan T. Tran whose telephone number is (571) 272-0606. The examiner can normally be reached on M-F 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to be 'S. Tran', with a long, sweeping horizontal line extending to the right.

S. Tran  
Patent Examiner  
Art Unit 1615